**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-2004-045** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Catering services.** |
| **Keywords:** |  |
| **Approval Date:** | **08/16/2004** |

**Body:**

Office of Policy & Research

August 16, 2004

XXXX
XXXX
XXXX

RE: Your letter dated August 4, 2004

Dear XXXX:

Thank you for your recent letter. You operate a restaurant and a banquet and catering business in Dog-jaw, Kansas. Some banquets are held at your restaurant. Other banquets are catered off-site. When you cater a banquet off-site, you sometimes buy disposable tableware and glasses. At other times, you rent tableware, glasses, tables, chairs, and other items needed to provide the service. When you bill the customer for the catered meals, you collect sales tax on the total amount charged to them, including any required gratuity. You ask if you may claim exemption when you buy the disposable tableware and glasses or rent tableware, glasses, tables, chairs, and other items. The answer is that you may claim exemption on the disposable tableware, disposable glasses, and disposable napkins that are provided to the consumer and discarded. You may not claim exemption when you rent tableware, glasses, tables, chairs, and other items that you use to provide the catering service.

K.A.R. 92-19-69 is a regulation that applies to caterers:

(a) Each person engaged in the business of catering is a retailer as defined in K.S.A. 1986 Supp. 79-3602(d). Each retailer shall collect sales tax on the total gross receipts received from the sale of food, meals and drinks, other than alcoholic liquor as defined in K.S.A. 41-102 as amended by L. 1987, Ch. 182, Sec. 1 and amendments, and cereal malt beverages as defined in K.S.A. 41-2701 as amended by L. 1987, Ch. 182, Sec. 97, and amendments, unless specifically exempt. Sales tax shall be imposed on the total selling price of the transaction without any deduction or exclusion for labor or services expended, skill, time spent, overhead and other expenses incurred by the caterer in producing the tangible personal property or profit thereon, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether separately billed or segregated on the same bill.
(b) Each amount designated as a service charge added to the price of food, meals or drinks, shall be a part of the selling price of the food, meals or drinks, and shall be included in the total selling price subject to sales tax, even though such charges are made in lieu of tips and are paid over by the retailer in whole or in part to the retailer's employees.
(c) The gross receipts received by a person holding a temporary permit as defined in K.S.A. 41-2601 as amended by L. 1987, Ch. 182, Sec. 60, from each sale of alcoholic liquor as defined in K.S.A. 41-102 as amended by L. 1987, Ch. 182, Sec. 1 and amendments, and cereal malt beverages as defined in K.S.A. 41-2701 as amended by L. 1987, Ch. 182, Sec. 97 and amendments, upon which no Kansas excise tax has been paid, shall be subject to sales tax.

Generally, restaurateurs are required to pay sales tax on the tableware, utensils, cooking equipment, and other durable goods that they purchase and use to prepare and serve meals. *Southwestern Bell Tel. Co. v. State Commission of Revenue and Taxation*, 168 Kan. 227, 212 P2d 363 (1940). Title to these goods remain with the restaurant. Restaurateurs may claim exemption from tax when they buy food, spices, and the other ingredients of the meals they prepare. *K.S.A. 79-3603(d); K.S.A. 79-3606(m).*These items become part of the meals that the consumer buys. These purchases are exempt because they are ingredient or component parts of the meals being sold.

By statute, ingredient or component parts include: "Containers, labels, shipping cases, paper bags, drinking straws, paper plates, paper cups, twine and wrapping paper used in the distribution and sale of property taxable under the provisions of this act by wholesalers and retailers and which is not to be returned to such wholesaler or retailer for reuse." *K.S.A. 2003 Supp. 79-3602(p).* The title to these disposable items is transferred to consumer who pays for the meal or catering service.

When a restaurant buys tableware, glasses, tables, chairs, stoves, refrigerators, cooking utensils and other items to prepare meals, the purchases are taxable. *Southwestern Bell Tel. Co. id.*The cost of these items are overhead costs that are recovered, along with profit, when the customer is billed for their meal. This same thing holds true for caterers. Caterers must pay tax on the durable items they buy and use in their catering business. Caterers cannot avoid paying tax when they acquire these items by renting them for an catered event rather than buying them. As the regulation provides:

Sales tax shall be imposed on the total selling price of the transaction without any deduction or exclusion for . . . overhead and other expenses incurred by the caterer in producing the tangible personal property or profit thereon, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether separately billed or segregated on the same bill." K.A.R. 92-19-

When a caterer rents tableware, glasses, tables, chairs, stoves, refrigerators, cooking utensils and other items to prepare meals, the rentals are taxable. The cost of these items are overhead costs that are recovered, along with profit, when the customer is billed for their meal. Consumers generally have possession of the rented items for less time than the caterer. From your letter, it does not appear that your customers have the option to arrange for these items to be furnished by a third party for a reduction in the caterer's charge. As noted, a caterer who rents these items is using them to furnish taxable rather than renting or re-renting them to the customer. Accordingly, these rental charges to the caterer are taxable overhead costs to the caterer. As discussed, the controlling statute only allows items whose ownership is are transferred to the consumer to be purchased tax exempt.

Please note that the exemption for disposable items is limited to items that are given to the consumer as part of the sale. This would include such things as drinking straws, paper plates, paper cups, paper napkins, disposable tableware and so forth. It does not extend to disposable items that the consumer will not take title to, such as disposable tablecloths and paper towels used in food preparation and clean up. Title to these items is never transferred to the consumer. See *Southwestern Bell Tel. Co. id.*

I hope that this adequately explains this area. Please call me if you have any additional question. This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked in the future by the operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or published revenue ruling, that materially effects this private letter ruling.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 08/24/2004 Date Modified: 09/09/2004**